

VERMONT DEPARTMENT OF LABOR

**NOTICE OF PROPOSED RULEMAKING**

**UNEMPLOYMENT INSURANCE COVERAGE RULE FOR DIRECT SELLERS AND  
NEWSPAPER CARRIERS**

The Vermont Department of Labor is proposing to adopt an administrative rule that will clarify the status of direct sellers and newspaper carriers as it pertains to both their employers' liability for unemployment insurance tax and their eligibility for unemployment insurance benefits. The text of the rule is set forth below.

In accordance with the rulemaking process, a public hearing on the rule has been scheduled for Wednesday, August 5, 2015, at 10:00 a.m. The meeting will take place in the Vermont Interactive Television studio located in the Department of Labor's central office at 5 Green Mountain Drive, Montpelier. The following offices of Vermont Interactive Television will also be available for those who wish to participate in the hearing.

- Brattleboro
- Bennington
- Montpelier
- Lyndonville
- St. Albans

Directions to each of the above locations are available here:

<http://www.vitlink.org/HTML/Locations.htm>

Individuals wishing to submit written comment on the proposed rule may do so by emailing them to [dirk.anderson@state.vt.us](mailto:dirk.anderson@state.vt.us) or by mailing them to:

Dirk Anderson  
Vermont Department of Labor  
P.O. Box 488  
Montpelier, VT 05601-0488

Written comments must be submitted no later than August 14, 2015.

VERMONT DEPARTMENT OF LABOR

UNEMPLOYMENT INSURANCE AND WAGES DIVISION

UNEMPLOYMENT INSURANCE COVERAGE RULE FOR DIRECT SELLERS AND  
NEWSPAPER CARRIERS

Section 1. Authority

This rule is issued by authority of the commissioner of labor, as conferred by 21 V.S.A. §§ 1, 1301(6)(C)(xxi), 1302(b), and 1307.

Section 2. Purpose of Rule

Pursuant to No. 136 of the Acts of the 2005 Adj. Session (2006), 21 V.S.A. § 1301(6)(C)(xxi) was added to Vermont's Unemployment Compensation law. The purpose of the act was to exempt a class of individuals known as "direct sellers" from the definition of "employment," as that term is defined by § 1301(6). Doing so rendered the remuneration paid to such individuals neither taxable to the employer, nor available to the individual for purposes of establishing benefit eligibility. Since passage of the law, the department of labor has been questioned and proposed to amend its application of the exemption to certain newspaper carriers. This rule is intended to clarify the scope of the statutory exemption.

Section 3. Application of Exemption

In accordance with 21 V.S.A. § 1301(6)(C)(xxi), and for the purpose of assessing unemployment contributions against employers, services provided by direct sellers shall not be considered employment. In order to be considered a direct seller, an individual must meet the requirements of a), b) and c) below:

- a) Be engaged in the trade or business of:
  - 1) Selling or soliciting the sale of consumer products, including services, either
    - A) In a home, or other place that is not a permanent retail establishment, or
    - B) To any buyer on a buy-sell basis or a deposit-commission basis for resale in a home or other place that is not a permanent retail establishment.
- b) Substantially all of the individual's pay for the services described in subsection a) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked.
- c) The services performed by the individual must be performed under a written contract between the individual and the person for whom the services are performed, and the

contract must provide that the individual will not be treated as an employee for federal and state tax purposes.

**Section 4. Newspaper Carriers are Not Direct Sellers.**

Individuals engaged in the delivery or distribution of newspapers (including any services directly related to that trade or business) shall not be considered direct sellers, unless it can be demonstrated that their remuneration is substantially derived from their personal solicitation of the sale, subscription, or renewal of subscription of such newspapers.